

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

OCT - 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 The Pay Telephone Reclassification and)
 Compensation Provisions of the)
 Telecommunications Act of 1996)

CC Docket No. 96-128

RBOC/GTE/SNET Payphone Coalition)
 Petition for Clarification)
)
)

NSD File No. L-99-34

**OPPOSITION OF ONE CALL COMMUNICATIONS, INC. TO PETITIONS FOR
 RECONSIDERATION AND PETITION FOR DECLARATORY RULING**

One Call Communications, Inc. ("One Call"), pursuant to the Commission's Public Notice,¹ opposes the petitions filed by certain interexchange carriers ("IXCs") relating to the Commission's Second Order on Reconsideration in the above-captioned proceedings ("*Second Reconsideration Order*"),² which modified the Commission's rules regarding per-call compensation for payphone calls.

In the petition for declaratory ruling and for reconsideration filed by WorldCom, Inc. ("WorldCom") and the petitions for reconsideration and/or clarification filed by AT&T Corp. ("AT&T") and Global Crossing Telecommunications, Inc. ("Global Crossing"),³ the petitioners attempt to reduce their compliance obligations under the *Second Reconsideration Order* by

¹ FCC Public Notice, *Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration*, DA 01-1967 (Aug. 20, 2001).

² Second Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, FCC 01-109 (April 5, 2001) ("*Second Reconsideration Order*").

³ WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration (May 29, 2001) ("WorldCom Pet."); AT&T Petition for Clarification and/or Reconsideration (May 29, 2001) ("AT&T Pet."); Petition for Reconsideration and Clarification, Global Crossing Telecommunications, Inc. (May 29, 2001) ("Global Crossing Pet.").

asking the Commission to change the definition of “completed call” and to make other rule changes that would have the effect of changing the definition of “completed call” or that would nullify contractual payphone compensation arrangements between carriers such as One Call and payphone service providers (“PSPs”). The requested changes would require One Call and other carriers providing resale interexchange service to payphone users to pay many multiples of the level of per-call compensation that is authorized by the prior *Payphone Orders*.⁴ Each of petitioners’ attempts to offload its compliance burdens onto a smaller competitor, based on what AT&T admits is a “knowingly incorrect” assumption,⁵ should be rejected. Moreover, in denying requests that would restrict resellers’ and PSPs’ freedom of contract, the Commission should instruct the petitioners and other IXC’s to recognize all dial-around compensation agreements between PSPs and resellers.

Introduction and Background

In the *Second Reconsideration Order*, the Commission modified its per-call compensation rules for coinless payphone calls delivered by a local exchange carrier (“LEC”) to a facilities-based interexchange carrier (“IXC”) and routed by the IXC to a switch-based telecommunications reseller for completion. One Call, an operator services provider (“OSP”) to over 150,000 payphones across the United States, provides operator and interexchange services on a resale basis at certain independent (*i.e.*, non-LEC) payphones. One Call vigorously

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (“*Payphone Classification Order*”); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (“*Payphone Reconsideration Order*”), *aff’d in part and remanded in part sub nom. Ill. Public Telecomm. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *cert. denied sub nom. Va. State Corp. Comm’n v. FCC*, 523 U.S. 1046 (1998); Second Report and Order, 13 FCC Rcd 1778 (1997), *aff’d in part and remanded in part sub nom. MCI v. FCC*, 143 F. 3d 606 (D.C. Cir. 1998); Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) (“*Third Payphone Order*”), *aff’d sub nom. American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

⁵ AT&T Pet. at 3.

competes with the much larger petitioners, both in its capacity as a reseller and as the underlying IXC at other payphones, in the provision of interexchange services to payphone users.

Prior to the *Second Reconsideration Order*, any reseller that had identified itself as the “responsible party” for the payment of payphone compensation was required to pay per-call compensation to PSPs for coinless payphone calls routed to it by an underlying IXC pursuant to the *Payphone Reconsideration Order*⁶ and the *Coding Digit Waiver Order*.⁷ Alternatively, carriers were permitted to negotiate compensation arrangements acceptable to PSPs,⁸ and One Call has paid compensation to numerous PSPs pursuant to contractual arrangements.

The *Second Reconsideration Order*, however, requires the first underlying facilities-based IXC, rather than the switched-based reseller, to compensate the PSP for all completed coinless calls that the IXC routed to the reseller. The *Second Reconsideration Order* also requires the underlying IXC to track or arrange for tracking of such calls to determine whether they are completed and therefore compensable and provide to the PSP a statement of the number of coinless calls the IXC receives from each of that PSP’s payphones. The *Second Reconsideration Order* provides that each reseller to whom payphone calls are routed by the dialing of the reseller’s number must reimburse the underlying IXC for the amount of per-call compensation paid by the IXC to each PSP for such calls and for the IXC’s cost of tracking the calls and providing such information to the PSP. Notably, the *Second Reconsideration Order* also permits resellers and other carriers to continue their alternative compensation arrangements with PSPs under contract.

⁶ 11 FCC Rcd at 21277.

⁷ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 10893, 10915-16 (1998) (“*Coding Digit Waiver Order*”).

⁸ See 47 C.F.R. § 64.1300(a).

Petitioners' Requests Should Be Denied

A. Requests That Effectively Would Change The Definition Of Completed Call And Global Crossing's Request To Use A Timing Surrogate Should Be Rejected

Petitioners have presented no justification for reconsideration, at this late date, of the definition of completed call or for the adoption of the definitions or other rules that they seek, all of which are based on "knowingly incorrect ... assumption[s]." ⁹ As AT&T concedes, the assumption that any call routed to a switch-based reseller will be completed -- the basis for its and WorldCom's requests -- bears no relation to reality. AT&T also admits that its own completion rate for pre-paid card calls is only 70 percent. ¹⁰ As explained in the attached Declaration of Ann C. Bernard, One Call's Corporate Counsel, One Call's completion rate for "0+" calls (*i.e.*, a call initiated by dialing a "0" followed by the number of the called party or other numbers) is even lower, about 20-30 percent. ¹¹ That means that if AT&T's or WorldCom's petition is granted, PSPs will end up receiving three to five times as much per-call compensation for calls routed to One Call or other resellers as would be justified by the actual completed calling volume under the payphone compensation rules set forth in the *Payphone Orders*. ¹²

Petitioners present no rationale supporting such a windfall for PSPs. Instead, petitioners appear to assume that all relevant interests will be satisfied if PSPs are generously compensated. ¹³ Petitioners intend to finance their generosity, however, with One Call's and other resellers' funds. Although the petitioners raise various challenges to the *Second*

⁹ AT&T Pet. at 3. The *Payphone Classification Order*, 11 FCC Rcd at 20573-74, and *Payphone Reconsideration Order*, 11 FCC Rcd at 21242, defined "completed call" in 1996.

¹⁰ AT&T Pet. at 3 n.4.

¹¹ Declaration of Ann C. Bernard at 3 (Oct. 8, 2001) ("Bernard Declaration").

¹² *Id.* at 3.

¹³ *See, e.g.*, AT&T Pet. at 3 ("the assumption underlying AT&T's practice is clearly favorable to PSPs").

Reconsideration Order, none objects to the provision allowing the underlying facilities-based IXC to obtain reimbursement from its reseller customers for all payphone compensation paid on calls routed to such resellers. Petitioners thus are requesting that they be permitted to overcompensate PSPs “knowingly” for calls routed to resellers such as One Call and then secure reimbursement for such overcompensation from the resellers.

For carriers as large as AT&T and WorldCom, the differences in compensation amounts are not significant, particularly because they expect others to reimburse them for the extra compensation. For an OSP such as One Call, however, paying three to five times the compensation required could mean the difference between survival and bankruptcy. The relative burden of such grossly inflated payphone compensation obligations on OSPs such as One Call is magnified by their inability to recover such costs by charging end users for incomplete calls.¹⁴

Global Crossing’s requested timing surrogate is equally unjustifiable.¹⁵ In One Call’s experience, it often takes a minute or longer for an operator handling a 0+ call to take billing information and/or to ask the called party whether he/she is willing to accept a collect call. These processes often result in incomplete calls.¹⁶ An assumption that “950” payphone calls that last 45 seconds and all other payphone calls that last 25 seconds will be completed thus will inflate the reported volume of completed calls. As Global Crossing concedes, the Commission rejected timing surrogates as a method for determining whether calls are completed in the *Payphone Classification Order*.¹⁷ Global Crossing’s request to reconsider this five-year old

¹⁴ See 47 U.S.C. § 226(b)(1)(B), (F) and (G) (prohibiting OSPs from charging for unconnected or unanswered calls).

¹⁵ Global Crossing requests that the Commission adopt a rule that payphone calls routed to resellers be considered completed if the “carrier time field” at the originating switch is over 25 seconds, except for “950” calls, which would not be considered completed until 45 seconds have elapsed. Global Crossing Pet. at 3-8.

¹⁶ Bernard Declaration at 3.

¹⁷ 11 FCC Rcd at 20574.

decision suffers from all of the same defects as the other petitioners' requests and also should be rejected.

Petitioners attempt to justify their approaches by arguing that if they must develop new systems to track each PSP's calls that are routed to resellers, they will have little choice but to pass on the costs of such development and administration to the resellers, as the *Second Reconsideration Order* permits. They argue that, accordingly, the resellers ultimately will be required to pay greater reimbursement amounts than the additional per-call compensation that would have been paid under petitioners' alternative approaches.¹⁸ That comparison, however, assumes a much higher completion rate than One Call actually experiences. As noted above, AT&T made its comparison assuming a completion rate of 70 percent. One Call's completion rate is substantially less than half that figure. Even assuming that AT&T were correct that its approach would be less costly than tracking the actual number of completed calls at a 70 percent completion rate -- which One Call does not concede -- none of the petitioners has shown that the cost of tracking would be so great that it would be equivalent to three to five times the correct amount of payphone compensation for every completed call routed to a reseller. In the absence of such a showing, petitioners' requests must be denied.

B. Global Crossing's And WorldCom's Requests Should Be Rejected Because They Would Nullify Resellers' Payphone Compensation Arrangements With PSPs

The Commission also should reject Global Crossing's request that the Commission disrupt long-standing private contractual arrangements by prohibiting resellers from negotiating (or continuing) compensation arrangements with PSPs. There is no justification for dictating to PSPs or carriers with whom they may or may not deal. Global Crossing's concern that compensation arrangements between PSPs and resellers cannot be monitored by IXC's is unfounded. Once a reseller notifies the underlying IXC that it has a compensation arrangement with a PSP, the IXC should rely on that notification unless and until the PSP states otherwise.

¹⁸ See, e.g., AT&T Pet. at 3-4; WorldCom Pet. at 3-4.

One Call has been compensating numerous PSPs for years under contract, and Global Crossing has presented no reason to believe that such arrangements now require policing by IXC.

WorldCom's petition for declaratory ruling, discussed above, would bring about a result similar to Global Crossing's requested prohibition. WorldCom requests that a payphone call be treated as completed if it is routed to a reseller that does not have agreements "with all" PSPs.¹⁹ Under WorldCom's approach, if a reseller had contractual payment arrangements with most of the more than one thousand PSPs in the United States, but it handled one call originating from a PSP with whom it had no such contract, the underlying IXC could ignore all of that reseller's contracts with other PSPs and treat all calls routed to that reseller as completed, pay compensation based on that incorrect assumption and demand reimbursement from the reseller for the inflated compensation resulting from the incorrect assumption. WorldCom's request thus should be denied not only for the reasons explained above, but also because it would nullify PSP/reseller compensation contracts.

Conclusion


Accordingly, the Commission should reject petitioners' requests to base per-call compensation on the assumption that any payphone call routed to a reseller will be completed or on the assumption that any such payphone call of a certain duration is completed. These assumptions would inflate the compensation obligations passed on to resellers such as One Call. Not only would such admittedly incorrect assumptions unfairly burden resellers with vastly expanded payphone compensation obligations, but the ability of large IXCs to create such burdens for their small competitors in the operator services market also would harm competition in that market.

Global Crossing's requested prohibition against PSP/reseller contracts also should be denied. Resellers and PSPs should continue to be permitted to negotiate compensation terms, and their contractual arrangements should be recognized by all parties. Similarly, WorldCom's

¹⁹ WorldCom Pet. at 2.

petition for declaratory ruling should be rejected because it effectively would nullify all of a reseller's compensation arrangements with PSPs if there were any PSPs with whom the reseller did not have a compensation arrangement. In denying Global Crossing's and WorldCom's requested restrictions on resellers' and PSPs' freedom of contract, the Commission should instruct the IXCs to recognize all dial-around compensation agreements between PSPs and resellers and to refrain from paying per-call compensation for calls originating at a PSP and routed to a reseller when the reseller and PSP have such an agreement.

Respectfully submitted,

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October 9, 2001

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DECLARATION OF ANN C. BERNARD

Ann C. Bernard deposes and says as follows:

1. My name is Ann C. Bernard. I am Corporate Counsel to One Call Communications, Inc. ("One Call"). I submit this Declaration in support of : (1) One Call's Petition for Waiver and (2) its Opposition to Petitions for Reconsideration and Petition for Declaratory Ruling, filed herewith, relating to the per-call payphone compensation requirements established in the Commission's Second Order on Reconsideration in the above-captioned proceedings ("*Second Reconsideration Order*"). I am knowledgeable about One Call's operations and have responsibility for all matters relating to One Call's regulatory requirements, including One Call's payphone compensation obligations. Accordingly, I have been involved in ongoing discussions with various interexchange carriers ("IXCs") concerning the regulatory payphone compensation requirements applicable to payphone calls routed by IXCs to One Call.

2. One Call serves as the presubscribed operator service provider ("OSP") at payphones throughout the United States. One Call provides these services through its own switches on a resale basis to certain independent payphones (*i.e.*, payphones owned by payphone service providers ("PSPs") not affiliated with local exchange carriers ("LECs")). Resale service typically involves a One Call customer dialing One Call's

access code at an independent payphone presubscribed to another IXC, which then routes the call to One Call. Prior to the *Second Reconsideration Order*, a switched-based reseller such as One Call that had identified itself as the “responsible party” for payphone compensation had been required to pay per-call payphone compensation to PSPs for coinless payphone calls routed to it by a facilities-based IXC. Alternatively, carriers were permitted to negotiate compensation arrangements with PSPs.

3. Unlike almost all other resellers of interexchange services to payphone users, One Call is a facilities-based OSP that has contractual payphone compensation arrangements with numerous independent PSPs. One Call also can track all completed calls originating from each PSP’s payphones that are routed to it and thereby derive the proper amount of payphone compensation that should be paid to each PSP for such calls. Among carriers that provide interexchange resale service to payphones, One Call’s widespread contractual arrangements with PSPs and its ability to track calls are virtually unique. Historically, One Call provided most of its payphone-related services not as a reseller but as the underlying OSP at payphones. The nature of such service required One Call to structure its operations to serve not only its own end user customers, but also the independent PSPs that selected it as the presubscribed interexchange carrier and contracted with it as the OSP for their payphones. As the OSP, One Call always tracked and billed for all of the calls it handled.

4. Although the *Second Reconsideration Order* explicitly permits contractual payphone compensation arrangements between resellers and PSPs to continue, certain IXCs have indicated, both in petitions for reconsideration of the *Second Reconsideration Order* and in recent conversations with me, that they will place burdensome administrative requirements on any attempt by One Call to claim that it already has paid compensation directly to PSPs under its contractual arrangements. Those IXCs will

demand reimbursement from One Call for per-call compensation that they have paid to the same PSPs for the same calls if One Call cannot satisfy their onerous requirements.

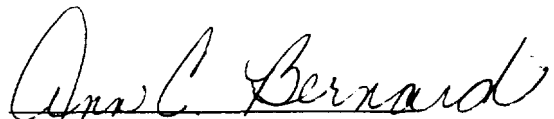
5. Moreover, as conceded by certain IXC's in their petitions for reconsideration, they cannot track payphone calls routed to switch-based resellers. Because per-call payphone compensation, in the absence of an agreement providing otherwise, is based on the number of completed calls, call tracking is essential to determine the correct amount of per-call compensation to be paid to each PSP. The IXC's request that, in light of their inability to track calls, they be permitted to pay per-call compensation based on the assumption that all calls routed to resellers are completed, and thus compensable, and then seek reimbursement for such compensation from the resellers.

6. One Call's completion rate for payphone calls is much lower. In the case of a "0+" call, *i.e.*, a call placed by dialing a "0" followed by other numbers, operator intervention is required, either to take billing information for a call billed to a calling card, credit card or other number or to ask the called party whether he or she is willing to take a collect call. These processes often take a minute or longer and in most cases result in incompleting calls, for a variety of reasons. For example, there may be a billing problem, or the calling party ultimately chooses not to make the call, or the called party refuses to accept a collect call. Accordingly, One Call's completed call rate is approximately 20%-30% of all toll calls handed off to it. Thus, surrogate measures -- such as an assumption that a call is completed if it lasts longer than 25 seconds or some other short period of time after it is handed off to One Call -- overstate the number of completed calls carried by One Call. Moreover, the IXC's assumption that all payphone calls routed by IXC's to One Call are completed vastly overstates the number of completed calls and thus would multiply the payphone compensation that is due for calls routed to One Call by three to five times the amount that is legally required.

7. The expanded payphone compensation obligations that will result from the duplicative and excessive reimbursement demands of the IXC's will impose a crushing financial burden on One Call and its customers. Not only is a cost increase of this magnitude unfair to the end users who depend on payphones, but it also will cripple One Call's ability to compete against the large IXC's in the already shrinking payphone operator services market, ultimately leading to yet additional rate increases.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of October, 2001.


Ann C. Bernard

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing Petition for Waiver was served on this 9th day of October, 2001, by U.S. mail, first-class postage prepaid, on

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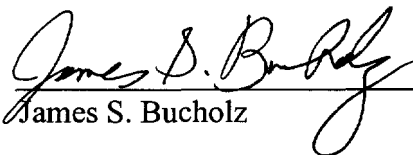
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